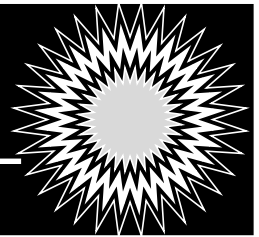


# Ethics News

Newsletter of the Indiana State Ethics Commission



Issue No. 20

August 2000

## Employees Sanctioned for Misusing E-Mail

As a result of information forwarded by a state agency to the Ethics Commission, a number of state employees from different agencies have been sanctioned for violating 40 IAC 2-1-9(f), misuse of state resources. Thirteen employees (from four different agencies) admitted in separate settlement agreements to using the state's e-mail system to send e-mail messages containing jokes, cartoons and other non-state related material. The settlement agreements contained

civil penalties of \$100 from each individual and called for a letter of reprimand. However, in recognition of the employees' early acceptance of responsibility and cooperation in the case, the Commission suspended all but \$25 of the civil penalty. A number of additional employees remain under investigation.

Although the State Ethics Commission last year adopted a policy allowing very limited personal use of state resources in certain cir-

cumstances, the content of these messages, or in some cases the frequency of them, made these unacceptable. (See article on page 3.)

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## Caseworker Cited for Conflict of Interest

The State Ethics Commission sanctioned a public assistance caseworker on April 13, 2000 for conflict of interest arising from her second job as a real estate agent. The caseworker was found in violation of IC 4-2-6-9 when she conducted real estate business with clients over who she was acting on behalf of FSSA's Division of Family & Children.

As a public assistance caseworker, the employee was responsible for processing

and reviewing applications from clients for social services. She then suggested what public assistance might be available to her clients. The caseworker also gathered pertinent information and documentation to determine public assistance benefits.

In 1997, the caseworker had earned a \$2,242 real estate commission when she represented DFC clients in the purchase of a home in 1997, while continuing to be the

couple's designated public assistance caseworker.

In March 1998, the caseworker asked a DFC clerk to type a real estate document for her. The clerk used state equipment to type the document during her lunch hour. The caseworker had also received telephone pages from her real estate clients on state time. These incidents resulted in the caseworker being sanctioned for misuse of state resources, time and personnel (40 IAC-2-1-9 [f] and [g]).

## Attorney Fined for Misuse of State Resources

A former attorney with the Indiana Professional Licensing Agency (IPLA) was fined \$1,000 in an Agreed Settlement approved by the State Ethics Commission on June 8, 2000.

The former employee admitted to violating 40 IAC 2-1-9(f) when he used a state computer, Internet privileges, telephone number, and printer for purposes other than official state business. He was also found to have violated 40 IAC 2-1-9(g) by engaging in work other than his official duties during working hours.

During an investigation initiated by the Commission on September 9, 1999, a review of the former employee's office computer directories and e-mail turned up numerous personal documents. Among these documents was the former employee's personal business letterhead with IPLA's office telephone number. Several personal letters and documents as well as matters pertaining to outside legal matters also were retrieved from the former

See, *Caseworker*, page 2

See, *Attorney*, page 3

## Former Fire Prevention Employee Sanctioned

A former field supervisor and fire prevention inspector with the Division of Fire and Building Services (DFBS) was fined \$1,500 for misusing state time & resources. The former inspector admitted to violating 40 IAC 2-1-9(f) and (g) when he used a state vehicle for outside business travel and when he taught an outside class on state time.

In November 1997, eight days after joining the Fire Marshal's Office, the former employee was issued a state-owned vehicle for commuting purposes. In a memo from State Fire Marshal Tracy Boatwright, the former employee was alerted that personal use of the vehicle was prohibited unless outside emergency

conditions existed. The former employee used the state-owned vehicle to commute to arson classes he was teaching, some of which were on state time. Yet the teaching activities were not part of the former employee's official state duties.

The Ethics Commission accepted the Agreed Settlement on January 11, 2000.

### What's a Supervisor To Do?

How should supervisors handle ethics situations of their employees? Supervisors may handle "minor" violations directly. Examples may include certain instances of misuse of state equipment such as the copier machine, the telephone, the fax machine and computer. Continued misuse of this equipment by an employee would require a supervisor to use the steps of progressive discipline. However, using office equipment for financial gain (such as in support of an outside real estate business or for legal work unrelated to one's state job) – or to download or send potentially offensive material – would generally be considered more significant. In such cases a supervisor should likely report the matter to another appropriate person (ethics officer, agency head or the Ethics Commission).



See, *Supervisors*, page 4

## Caseworker

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In an Agreed Settlement with the Commission, the caseworker admitted to the above mentioned violations and agreed to pay a civil penalty of \$2,500 and to a reprimand from her appointing authority.

She further agreed not to represent or assist her DFC clients with outside real estate matters under any circumstances; not to represent or assist anyone in real estate matters which would conflict with DFC Policy; not to place or accept calls related to her real estate business while at DFC office or on DFC business; not to have outside communications equipment, including a pager or cell phone on during the time that she is on duty as a state employee unless it pertains to her official state business; not to use DFC personnel for outside business during DFC working hours or at the DFC office; and not to use DFC equipment for real estate work, including the telephone, under any circumstances.

Violation of any of the above is grounds for additional sanctions by either the DFC or the State Ethics Commission.

Since 1995, an FSSA agency policy incorporating the state ethics rules has been posted and made available to FSSA employees. Included in the policy are moonlighting guidelines for DFC employees. An example of prohibited outside employment in the DFC policy is that of a local office director who wants to sell real estate on the side to employees and agency clients.

### Fall Classes Open

#### Ethics Orientation

Oct. 17 10:00 - 11:00 a.m.

#### Ethics for Supervisors

Oct. 18 10:00 - 12:00 p.m.

#### Ethics for Managers

Oct. 25 9:30 - 12:00 p.m.

#### Ethics for Executives

Sept. 22 10:00 - 12:30 p.m.

Classes are held in the  
State Conference Center, Room A  
Indiana Government Center South  
402 W. Washington St.  
Indianapolis, IN 46204

To register, contact Mary Hill  
at (317) 232-3850

Note: Individualized agency training  
available upon request.

## Ethics Game on Internet



State employees are encouraged to test their knowledge of the State ethics rules by visiting the Ethics Commission's web site at [www.state.in.us/ethics](http://www.state.in.us/ethics). The latest addition to the site is an interactive game, *A Case of Ethics*, developed by the Commission as a learning tool for those who have access to the Internet. Players score points by solving ethical situations and taking chances along the way. Each week a list of the ten highest scoring players is posted. While you're there, check out the Commission's 1999 Annual Report featuring information on investigations and advisory opinions.

## Deferred Compensation Offers Easy Access to Accounts



State employees enrolled in the Indiana Deferred Compensation Plan now have the option of accessing their accounts online. The web site offers additional information on the retirement savings plan and can be accessed at [www.IndianaDC.com](http://www.IndianaDC.com). Because the deferred compensation program is a benefit of employment to state employees, accessing one's account during working hours is permissible, subject to the approval of one's supervisor.

## E-mail Jokes: No Laughing Matter

Private industry is feeling the monetary sting of sexual harassment suits due to employees sending inappropriate and offensive e-mail jokes and messages. Chevron Corporation, caught in a sexual harassment lawsuit brought about by a group of women claiming they were harassed through the company's internal e-mail system, settled the suit for \$2.2 million. The women claimed that Chevron had permitted the system to be used for sending sexually offensive messages.

At the brokerage firm, Edward Jones & Co., nineteen employees were fired after failing to admit that they sent pornography or off-color jokes over the company e-mail system. Another 41 who came forward were met with disciplinary measures.

Some employees view e-mail messages as private correspondence. Several employ-

See, *Jokes*, page 4

## Attorney

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employee's computer. In addition, the former employee used IPLA's e-mail system for personal and professional correspondence unrelated to IPLA work.

As an employee of IPLA, the attorney was expected to abide by the statements made within the IPLA Systems User Agreement. This Agreement says in part, "Files and software are to be used

for the transacting of state business only. Personal correspondence, data storage, and Email transmissions are prohibited and will be disciplined upon discovery."

The former employee violated this agreement, as well as ethics rules, when he used his agency e-mail address to send and receive messages concerning his outside legal cases, personal consumer matters, and other matters unrelated to official state business.

**N**o responsibility of government is more fundamental than the responsibility for maintaining the highest standards of ethical behavior by those who conduct the public business.

— President John F. Kennedy, April 27, 1961

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402 W. Washington St.  
Rm. W189  
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(317) 232-3850  
Fax: (317) 232-0707  
E-mail: [ethics@iquest.net](mailto:ethics@iquest.net)

David Maidenbergl  
Director  
Mary C. Hill  
Editor  
Wendy Stone Messer  
Attorney

Visit our web site at:  
[www.state.in.us/ethics](http://www.state.in.us/ethics)

## E-mail Jokes

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ees of Nissan Motor Company were fired when their supervisor monitored their e-mail containing inappropriate jokes and language. The employees' claim that their right to privacy was violated was dismissed in court. The judge ruled in favor of Nissan, upholding the company's argument that the employees had no reasonable expectation of privacy in their e-mail messages.

Other employees trying to fight back with privacy complaints have done so to no avail. Last year, a Texas

court ruled in favor of Microsoft when a former employee alleged his computer files had been "broken into" by the company.

Perhaps the most significant ruling on this privacy matter, thus far, is found in *Smyth v. Pillsbury Co.* This decision, the first of its kind to be handed down by a federal court, stated that, "a private sector at-will employee has no right of privacy in the contents of his or her e-mail when it is sent over an employer's e-mail system."

In the cases discussed on Page 1 of this newsletter, none of the employees e-mail was being monitored. The messages came to light when discovered well after they were originally sent when they were retrieved from the computer of an employee under investigation for an unrelated matter. The e-mails included the path of all others who had previously forwarded the messages. In many cases, the e-mails contained graphics, audio or other types of file attachments. They could have exposed recipient computers to computer viruses.

## Supervisors

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What should a supervisor do if an employee does commit an ethics violation? For example, the payroll clerk notifies the supervisor that there are discrepancies on an employee's time sheet – what should the supervisor do? If the discrepancies are honest mistakes, the supervisor can rectify the situation with the employee. However, if it appears the inaccuracies may be intentional, the supervisor should notify the appropriate person within the agency.

Ethics is part of every state employee's job. Supervisors can show employees the right thing to do but it is the responsibility of each employee to adhere to the ethics rules. Supervisors are asked to be aware of the ethics rules and to seek advice when needed. Advice may be sought from agency ethics officers, agency heads, or from the State Ethics Commission. *Ethics For Supervisors*, a course on the ethics rules, is offered by the Commission on a quarterly basis. (See, *Fall Classes Open*, on page two.)



### Text of Rules Cited in Conflict of Interest Cases

#### 40 IAC 2-1-9 Conflict of Interest; prohibitions

(f) A state officer or employee shall not make use of state materials, funds, property, personnel, facilities, or equipment for any purpose other than for official state business unless the use is expressly permitted by general written agency, departmental, or institutional policy or regulation, considering

the cost and the benefit by such use.

(g) A state officer or employee shall not engage in, or direct others to engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

#### 4-2-6-9 Conflicts of financial interest

Sec. 9. A state officer or employee may not participate in any decision or vote of any kind in which the state officer or the employee or that individual's spouse or unemancipated children has a financial interest.



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